



TRASK BRITT  
P.O. BOX 2550  
SALT LAKE CITY UT 84110

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JAN 06 2005

**OFFICE OF PETITIONS**

|                                   |                            |
|-----------------------------------|----------------------------|
| In re Application of              | :                          |
| Keith E. Dionne et al.            | :                          |
| Application No. 10/814,801        | : DECISION REFUSING STATUS |
| Filed: March 31, 2004             | : UNDER 37 CFR 1.47(a)     |
| Attorney Docket No. 3139-6349.1US | :                          |

This decision is in response to the petition filed December 14, 2004, under 37 CFR 1.47(a), in response to the Notice to File Missing Parts "Notice" mailed June 14, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 31, 2004, naming Keith E. Dionne, Robert Mosbauer, Craig R. Davis and John R. Peery, but without a signed declaration. Accordingly, on June 14, 2004, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, the present petition was filed with a request for a four month extension of time and the oath and declaration signed by inventors Dionne, Davis and Peery only. Petitioners seek status under 37 CFR 1.47(a) based on the fact that correspondences have been sent by mail and email as well as phone calls/messages, but that in spite of those efforts to have the oath or declaration executed, Mr. Mosbauer has not complied with the requests.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

The present petition lacks item (1).

In regards to item (1), petitioners have not provided sufficient proof that a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor. The "Declaration by Debra Mitchell regarding efforts to reach Robert Mosbauer", reveal that the declaration was sent to Mr. Mosbauer electronically and via FedEx, but don't indicate that the complete application was ever sent to Mr. Mosbauer. Thus, there is no evidence to show that Mr. Mosbauer had the benefit of reviewing the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventors for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

With respect to the petition fee, please be advised that effective November 22, 2004, the petition fee has been increased to \$200.00. Therein, deposit account no. 20-1469 will be charged in the amount of \$70.00 to make up the difference between that which was paid and that which is due pursuant to 37 CFR 1.17(g). See the Notice published in the Federal Register on September 21, 2004 and in the Official Gazette of the United States Patent and Trademark Office on October 12, 2004.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop Petitions  
                                    Commissioner for Patents  
                                    P.O. Box 1450  
                                    Alexandria, VA 22313-1450

By FAX:                      (703) 872-9306  
                                    Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions